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Civil Justice and the Jury by Charles W. Joiner

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between the possibility of reverter and the right of entry. One has equal difficulty in distinguishing between these two types of executory interests. Professor Dukemnier has urged elsewhere that there is no distinction between contingent remainders and executory interests.⁵⁰ The statute would require us to differentiate among executory interests.

Finally, while options were subject to the Rule Against Perpetuities at common law, rights of entry weren't. Frequently, it was difficult to ascertain whether an option or right of entry had been created. Although the statute does tend to narrow the gap in legal consequence that exists between the two devices, it offers no divining rod for identifying these interests.

In conclusion, I would like to reiterate that it is not the purpose of this reviewer to sound the alarm for abolition of the statute. Rather, it is a cry for clarification. Any revision can and should be based upon Professor Dukemnier's excellent study. It is to be hoped that the critical tone of this review does not obscure the fact that a contract to buy this unique book would be specifically enforceable.

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CIVIL JUSTICE AND THE JURY. By Charles W. Joiner. Prentice-Hall, Inc., Englewood Cliffs, N. J., pp. xviii, 238, no index. 1962.

This work on the role of the jury in the administration of civil justice consists of two parts: the author's "critique" of the jury, followed by a selection of "what thoughtful lawyers and judges have said about the jury since its inception."¹ The initial portion purports

to examine the jury as it operates today, to compare the arguments pro and con, to marshal what is known about its operations, to put it in context within the whole framework of government as well as within the process of resolving disputes between litigants, and lastly, to examine suggestions for its improvement.²

To the accomplishment of these sizable tasks the author allocates less than half of the book, or roughly 30,000 words!

In actuality, this section of the work amounts to little more than a highly simplified and somewhat idealized explanation of the oper-

⁵⁰ *Contingent Remainders and Executory Interests; A Requiem for the Distinction*, 43 Minn. L. Rev. 13 (1958).

¹ Joiner, *Civil Justice and the Jury* xviii (1962).

² *Id.* at xvii.

ation of the jury in civil cases, into which is woven a thinly disguised affection for the institution. Such changes as are suggested are hardly revolutionary; most are currently in use in at least some jurisdictions. Among these improvements are: more thorough screening and greater selectivity in choosing jurors, less-than-unanimous verdicts, smaller juries, and an enlarged use of the special verdict. Also suggested are the use of the language of the layman in instructing juries, greater use of visual aids in the presentation of evidence, and better lawyers and judges.

The arguments concerning the value of the civil jury largely revolve around psychological and sociological problems, and the author is to be commended for his recognition of and attempt to utilize materials drawn from these disciplines. The overall effect is impaired, however, by the selectivity exercised in the choice of findings to be reported. The impression conveyed is that virtually all such data support the author's preferences *vis a vis* the civil jury. Even a casual survey of recent literature dealing with the jury suggests, on the contrary, that critics of the jury have been able to draw as freely upon the findings of these disciplines as have its defenders.

The latter portion of the book is devoted to testimonials to the importance of the jury, interspersed with authoritative recommendations for those changes suggested in Part I. These endorsements of the author's views are taken largely from past and present members of the English and American bars. In terms of the announced intention to present arguments pro and con, it is regrettable that no selections were included from the works of more critical, if less "thoughtful," students of the jury both within and without the legal profession.

In fairness it should be noted that the work is addressed to the layman, rather than to members of the legal profession and (it is assumed) others reasonably familiar with the jury system and the controversies surrounding it. But it is presented "to help laymen understand and think about issues involving the jury."³ Whether it accomplishes this objective is questionable, if only because the "issues" are not clearly and fairly presented. Indeed, the layman who derives his understanding of the civil jury more or less completely from this work may well wonder what all the fuss—the controversy alluded to in the introduction as having occasioned the work—is about.

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³ *Id.* at xviii.